

DERBYSHIRE COUNTY COUNCIL**APPOINTMENTS AND CONDITIONS OF SERVICE COMMITTEE****7 February 2020****Report of the Director of Organisation Development & Policy****Market Supplement Policy****1. Purpose of the report**

For the Appointments and Conditions of Service Committee (ACOS) to agree the draft Market Supplement Policy attached at Appendix 1.

2. Introduction

A market supplement is a temporary additional payment to a role where there is clear evidence that the Council's total remuneration package causes demonstrable recruitment and retention issues. These issues may lead to the Council's inability to meet essential service needs, statutory responsibilities and cause significant reputational and or financial risks to the Council. Market supplement payments must at all times be justifiable by reference to market conditions and to achieve this they can only be agreed for a maximum of two years. A full review of market conditions will be carried out 6 months prior to the proposed end date to determine whether the payment should be withdrawn, extended and/or changed. The payment of a market supplement may be reviewed at any time in the event it is felt that market conditions no longer justify the payment. Market Supplement applications will require authorisation by ACOS.

In light of the increased application of temporary market supplement payments, a Market Supplement Policy has been developed (based on the existing market supplement procedure) to ensure a robust and consistent process is adopted by the Council in the application of market supplement payments.

This policy sets out the guiding principles to be adopted when considering the payment of a market supplement to ensure legal compliance and minimise the risk of creating an equal pay liability.

Departmental Directors/Heads of Service will be required to identify and contribute to the provision of appropriate market data evidence with support from HR and Legal Services to establish that all other non-pay options have been considered before an application can be submitted.

3. Roles, responsibilities and payment terms

The Policy sets out:

- the roles and responsibilities of Service Directors/Heads of Service, HR, Legal and the Trades Unions
- how to identify the comparator market and relevant market data
- how to determine the amount of market supplement payment
- how the market supplement will be paid and what elements of pay will include the payment
- how jobs with a market supplement payment should be advertised
- the review process

4. Pay Considerations

Market supplement payments have historically been attached to posts where there has not been a requirement for additional hours or for relief employees.

Since the introduction of market supplement payments for Social Workers in Child Protection Teams (July 2019) and Night Care Assistants in Children's Residential Homes (April 2019) it has been necessary to agree in advance of the policy how market supplements will be paid in relation to the following payment types which are set out within the policy:

- part time employees working additional hours up to 37 per week
- relief employees working up to 37 hours per week
- maternity, adoption, parental, foster carer leave
- authorised absences
- accrued leave and bank holidays

The total annual market supplement payment agreed at ACOS is based on a full time employee (paid for 37 hours per week and for 52 weeks per year) and must not be exceeded. Therefore part time and relief employees will only attract market supplement payments for hours worked up to 37 hours per week. For all employees, hours treated as overtime (above 37 hours per week) will not attract market supplement payments.

Where work is undertaken and paid at enhanced rates, market supplement payments will only apply to the plain time element of worked time, up to the maximum of 37 hours within a week.

Market supplement payments will be paid in line with Derbyshire Package terms and conditions for all periods of absence including occupational maternity, adoption and sick pay. Where unpaid elements of the Council's leave schemes apply the salary deduction will include a proportion of market supplement payment.

5. HR Considerations

Market supplements will be paid to all employees in the relevant post as a separate and clearly identifiable addition to basic pay. Separate contract letters will detail the terms and conditions applying to market supplements and include the end date and review period. Consideration will be given to the effect on related employee groups and the Council will engage with recognised trade unions.

The effectiveness of market supplement payments will be monitored to assess the impact on recruitment and retention and to ensure they are applied in a consistent and non-discriminatory manner.

6. Financial Considerations

Service Directors/Heads of Service will identify how additional costs for market supplement payments will be funded.

7. Legal Considerations

The Council needs to take care to ensure that the payment of a market supplement does not lead to exposure to equal pay claims under the Equality Act 2010. The payment of a market supplement may lead to circumstances in which male and female employees are paid differing amounts in respect of work which has been rated as equivalent under the Council's job evaluation scheme. In order to successfully resist equal pay claims the Council will need to show that the difference in pay is explained by a material factor that does not involve direct or unjustified sex discrimination.

In addition to presenting industrial relations issues the payment of market supplements can present a risk of undermining pay and grading structures which can in turn lead to exposure to costly equal pay claims, therefore in view of the potential financial liabilities which could be created in the event that the policy was found to be deficient external counsel has also reviewed the draft policy. Counsel recommended one revision to the draft policy, which gives the Council greater flexibility in circumstances where there are difficulties obtaining comparative market pay data to support an application; this been incorporated in to the current policy.

In addition Counsel advised that:

- The Council needs to ensure that the policy is consistently applied.
- Managers should receive training in how to use/ interpret the policy.
- When market supplements are reviewed they should be subject to the same scrutiny as the initial application.
- In the event payments are not regularly reviewed, or market forces have changed which no longer justify the payment, but the supplement continues

to be paid there is an increased risk that employees would be able to claim the payment as a contractual entitlement.

- Exit interviews can provide useful evidence in terms of justifying market supplement payments.
- The Council needs to be mindful that if the “market rate” itself is tainted by discrimination then a material factor defence would be likely to fail.
- In the event the Council wants to pay a market supplement but is unable to demonstrate that current pay is below the “market rate” this may be permissible but to limit risk of challenge we would need to evidence: (1) payments are genuinely due to difficulties in recruiting/ retaining employees (2) there is/ would be a genuine negative impact upon the service as a consequence of the inability to recruit/retain employees (3) the amount of the payment is justifiable and likely to achieve positive results.

Market supplements have been held to be a ‘material factor’ in some but not all cases. The introduction of the market supplement policy which provides a clear and consistent approach to the application of market supplements and requires the business need for the payment to be robustly evidenced by reference to market data will assist in mitigating the risk of successful equal pay challenge.

8. Recommendation

That ACOS agree the draft Market Supplement Policy;

Emma Crapper
Director of Organisation Development & Policy

MARKET SUPPLEMENT POLICY



February 2020

Version History			
Version	Date	Detail	Author
1.00	February 2020	Market Supplement Policy	P Buckley

Links and Dependencies

Derbyshire County Council - Council Plan	
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1. Introduction

The Council is committed to operating consistent and equitable pay arrangements for all employees. To comply with the Equality Act 2010 male and female employees should generally receive the same level of pay if they are carrying out equivalent work. In order to achieve a pay structure free from gender bias the Council's pay rates are set in accordance with the scoring of roles under the Hay job evaluation scheme.

In exceptional circumstances, where the Council is able to demonstrate that recruitment and retention issues are impacting on service delivery, providing other non-pay related options have been explored and discounted, the payment of a temporary additional element of pay paid in addition to basic salary may be justified. This should be supported with clear evidence that the Council's rate of pay for a defined post or group of posts falls below the required level in relation to the comparator market. The required level will be determined by the Council at the time taking into account relevant market data and the needs of the service.

This policy sets out the guiding principles for the payment of market supplements.

2. Scope

Market supplements will be paid to all employees in the relevant post as a separate and clearly identifiable addition to basic pay. It is a post related payment and as such does not relate to the performance, capability, commitment or merit of an individual employee.

3. Equality Impact Assessment

The Council will monitor the overall application of the policy to ensure that it is being applied in a consistent and non-discriminatory manner. An equality impact assessment will be carried out as part of each market supplement application.

The Council will have a defence against an equal pay claim where it can be shown that the difference in pay is explained by a 'material factor' that does not involve direct or unjustified indirect sex discrimination. Market forces have been held in some but not all cases to be a 'material factor'. If the payment of a market supplement involves indirect discrimination, it must be objectively justifiable i.e. a proportionate means of achieving a legitimate aim.

4. Roles and Responsibilities

4.1 Senior Management Teams

Service Directors/Heads of Service will:

- Demonstrate the need for the application of a market supplement payment including collection of evidence from exit interviews, having satisfied all other non-pay avenues
- Identify comparators and contribute to the provision of appropriate market pay data to establish pay differentials between the evaluated rate of pay and that of competitors
- Identify any impact to employee groups across the Council
- Carry out an equality impact assessment to establish any inequality in relation to gender or protected characteristics
- Identify funding for the payment of market supplements
- Submit market supplement applications (Appendix 1) to Corporate Management Team (CMT) and Appointments & Conditions of Service Committee (ACOS)
- Carry out reviews of existing market supplement payments commencing 6 months prior to the end of the fixed period
- Communicate with all those in receipt of a market supplement payment throughout the review period to keep them informed of progress and outcomes
- Ensure jobs with market supplements are advertised in the agreed format
- Review service requirements and resourcing strategies throughout the period of payment of a market supplement to remove the need for a temporary market supplement payment

4.2 Human Resources

The Director of Organisation, Development and Policy will:

- Work with senior management teams to identify causes of recruitment and retention difficulties across the workforce and to implement resourcing and reward strategies
- Establish that the evaluation of the job is consistent with the current duties of the role
- Support activity to identify comparators and contribute to the provision of appropriate market pay data to establish pay differentials between the evaluated rate of pay and that of comparators
- Support activity to identify any impact to employee groups across the Council and to establish any inequality in relation to gender or protected characteristics
- Review market supplement applications and the market data provided prior to submission to CMT
- Ensure jobs with market supplements are advertised in the agreed format

- Provide all affected employees with appropriate contractual documentation
- Record the outcome of all market supplement applications and ensuring the timely review of existing market supplements
- Recommend to ACOS whether a market supplement should be made, following consultation with the CMT.

4.3 Legal Services

The Director of Legal Services is responsible for:

- Provision of advice on the legal implications of applying market supplement payments in relation to equal pay and other equality considerations.

4.4 Trade Unions

- Recognised Trade Unions will be engaged in discussion in market supplement applications and reviews, including market data.

5. Guiding Principles

- Market supplements will only be paid where a case for payment is fully justified with supporting evidence that the level of salary is creating the recruitment difficulties and that all other non pay avenues have been considered
- Applications will only be considered via the process outlined in this policy
- Market supplements will be payable for a fixed period, up to a maximum of 2 years, and reviewed 6 months prior to the end of the fixed period to determine whether the payment should be withdrawn or extended and/or changed
- All employees carrying out the role will receive written notification of the market supplement setting out the contractual terms, start date, end date and 6 month review period and the fact it may be withdrawn at any point following notice
- When acting up for a role that receives a market supplement payment, the full duties and responsibilities of the role must be undertaken in order to receive the market supplement payment
- Market supplements should only be paid when justifiable and in scope of the agreed application. Those roles managing employees in receipt of a market supplement not in the scope of the agreed applications should not automatically be increased to maintain pay differentials.
- Where a market supplement payment is due to be withdrawn or changed, all affected employees will receive contractual notice of one month
- Where a market supplement will not continue to apply for any other reason, e.g. redeployment, payment will continue during the contractual notice period
- There is no appeal against the change to, or the withdrawal of, a market supplement payment
- Where agreement has been made to remove or change a market supplement payment candidates already in the recruitment process will be notified of the change prior to interview

- Where a post in receipt of a market supplement is regraded following evaluation a full review of the market supplement should be carried out to determine if the market supplement payment ceases or continues at a revised rate, authorised by CMT. The total remuneration package should not exceed the existing level of pay plus market supplement without further agreement through ACOS
- Market supplement payments should not exceed the agreed annual market supplement amount for a full time employee. For example, if the agreed total market supplement for a full time employee is £3,000, no employee should receive an annual market supplement payment in excess of that

6. Identifying the comparator market and relevant market data

The comparator market will depend on the type and level of the specific posts or group of posts for which an application for a market supplement is to be made.

Account should be taken of:

- The employment sector – local authority (unitary/district/county); wider public sector; not-for-profit; private sector
- The geographic labour market – national, regional or local - where are recruits expected to come from and where are competitor employers located?
- The organisations considered to be the main competitors for the post in question
- The size and resources of the organisation (number of staff employed; budget size; functions; population/client base served)
- Other labour market factors

Care needs to be taken in identifying (market) comparator posts to recruit the right candidates at the appropriate rate. Getting it wrong could be costly as the market supplement will be paid to all employees in the post as well as new starters.

In identifying comparator posts from market data, the posts should be the same, in terms of duties and responsibilities, or broadly similar in terms of the required knowledge, skills and responsibilities. All elements of earnings should be compared, i.e. total salary and wider benefits package. Equal pay challenges may arise where a claimant considers the market data used is not comparable.

Pay data is available from local/national advertisements, neighbouring authorities, regional local government employer networks, HR or profession-specific networks, consultants' pay databases, salary surveys and pay settlement data.

7. Determining amount of market supplement

When the appropriate comparator posts have been identified, together with the relevant market pay data, the amount of the market supplement must be determined.

The starting point is to assess the extent of the difference between the comparator market range and the Council's grade range for the post taking account of any additional allowances.

Market supplements are normally based on the median pay of comparators, however, total remuneration should be sufficient to enable the recruitment/retention of employees and should not exceed the level deemed necessary to attract suitable candidates.

When recruiting to a post that attracts a market supplement payment, care must be taken when appointing on higher pay points within the grade as the total remuneration must justify market conditions.

8. Payment Details

Market supplements **will** be:

- Pensionable and subject to tax and NI
- Paid as a clearly identifiable and separate supplement to basic pay (*NB: the market supplement will not be shown as a separate payment for periods of absence that are remunerated through a combination of occupational and statutory pay, e.g. sick or maternity pay*)
- Subject to eligibility, included in occupational and statutory calculations for periods of paid sickness, maternity and adoption leave at the appropriate rate e.g. for maternity leave 6 weeks at 90% pay (including market supplement), 12 weeks at 50% pay (including market supplement) and half rate for periods of half pay sickness, etc. Occupational and statutory rates will be recalculated for employees who are on maternity/adoption leave when a market supplement is introduced. When market supplements are reduced or removed during a period of maternity/adoption leave, only the occupational element is recalculated and reduced from the date of the change
- Paid monthly (pro rata for part-time employees)
- Paid as an additional payment on top of the hourly rate for relief employees
- Paid for authorised paid absences as set out in the Council's Employee Leave Schemes and Flexible Working guidance
- Paid at the appropriate rate for each post where an employee has more than one eligible job
- Adjusted accordingly where there is a change in contracted hours
- Paid at the appropriate hourly rate for hours up to 37 per week, including working hours up to 37 for standby, sleep in and recall to work
- Paid on accrued leave which has been accrued on part time hours up to a maximum of 37 hours per week
- Included in any deductions related to unpaid absences, eg. unpaid leave
- Paid for all additional hours worked up to 37 per week including the plain time hours worked at times that attract enhancements
- Included in Redundancy pay calculations
- Adjusted accordingly where contracted hours are increased/decreased (including a buy out of hours decrease in hours: NB: the market supplement will be included in the buy out calculation of actual pay for 26 weeks)

Market supplements:

- Will not be paid if an employee moves to, or is seconded to, a post without a market supplement
- Will not attract pay award increases or be affected by incremental progression
- Will not be paid for any hours over 37 per week, i.e. overtime
- Will not be paid on enhancements
- Will not be included in pay protection

9. Job Adverts

Job adverts will clearly identify the market supplement as a temporary additional element of pay detailing the end date, review date and review period. Actual salary/hourly rates will be provided setting out basic pay and total pay including the market supplement. The following agreed wording will be included in all job adverts to explain market supplement payments to potential applicants:

A temporary market supplement is attached to this post, which is a separate payment in addition to the normal salary. A review of market conditions will be carried out 6 months prior to the proposed end date to establish if the market supplement should continue. Further information on market supplement payments is available on our website [link].

10. Contractual documentation

All eligible employees will receive an additional contractual letter detailing all the terms and conditions relating to the temporary market supplement payment.

Appendix 1 – Market Supplement Application Form

A Market Supplement Application Form is attached at Appendix 1 detailing the supporting evidence required for consideration of a market supplement payment.

Appendix 2 – Market Supplement Process Flow Chart

Policy/Procedure owner:	HR Pay & Reward
Date last reviewed:	

Appendix 1**APPLICATION FOR THE PAYMENT OF A MARKET SUPPLEMENT**

Completed market supplement applications should be forwarded to the Assistant Director of HR. Applications will be considered by the Corporate Management Team prior to submission to Appointments & Conditions of Service Committee (ACOS).

Job Title		Department	
Benchmark ref/job family		Service area	
Evaluated Grade		Current salary range	
No of staff in post (including vacant posts)		Total amount of market supplement requested	
Period for which the payment is sought		Proposed implementation date	

Is this application to:

Assist recruitment to a vacant post(s)		Review a current market supplement	
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1.	Briefly outline the duties/responsibilities of the job or group of jobs for which payment of a market supplement is requested.
2.	Please outline the impact on service provision caused by recruitment and retention difficulties relating to this post.
3.	Has the post been reviewed by the Pay and Reward Team to reflect current job demands? Please provide details and date of assessment by Pay and Reward Team.
4.	Please provide current job and person profile and most recent advert details: <ul style="list-style-type: none"> • Does the job and person profile properly reflect the demands and requirements of the role? • Has the value of the total reward package and all employee benefits been promoted effectively? • Have opportunities for learning & development and career progression been highlighted? • Have other recruitment initiatives been exhausted, e.g. targeted advertising? • Have changes to working arrangements/flexible working, etc. been considered?

5.	Please provide evidence that consideration has been given to redesigning the job/structure to undertake the work in a different way, e.g. development of trainee roles, reallocation of duties, etc
6.	Please provide evidence that consideration has been given to the use of agency workers, contractors, partnership working, private sector or other providers to undertake the work outlining the advantages/disadvantages and associated costs
7.	Please provide details of turnover rates (in comparison to average turnover rates).
8.	<ul style="list-style-type: none"> • Please provide evidence from exit interviews where employees have moved to an equivalent post and cited pay as a reason for leaving. • Are employees leaving the Council achieving higher rates of pay for carrying out the same/ substantially similar role? • Is there evidence from staff surveys/TU representatives of unresolved workplace dissatisfaction which needs to be resolved by management?
9.	Please provide information on the number and quality of responses to job advertisements . Include dates advertised, where advertised and recruitment initiatives adopted
10.	Is there a regional/national skills shortage for which new/alternative training schemes would be a more appropriate solution?
11.	Is competitor employers' pay the main driver in attracting staff away from the organisation/deterring potential recruits?
12.	Likely effectiveness of market supplement. <ul style="list-style-type: none"> • Will the application of a market supplement payment trigger a pay spiral with neighbouring organisations raising pay rates to attract the same small group of suitable candidates

	<ul style="list-style-type: none"> If this is the case, consideration should be given to alternative strategies e.g. partnership working
13.	<p>Analysis of likely impact of market supplement.</p> <ul style="list-style-type: none"> This should include evidence to demonstrate that the wider and longer-term impacts throughout the Council have been properly assessed and thought through. The number of employees involved and the effect on their salaries, implications for other employees within the structure and in other employee groups and any equal pay considerations. Further advice should be sought from Legal Services.
14.	<p>Labour market data and the 'going rate' for the job:</p> <ul style="list-style-type: none"> provide details of the market data sources used to establish the 'going rate' for the job (e.g. recent media adverts, survey data, pay databases, other local authorities/schools, regional employer networks, Hay User Group, EM Councils, etc.) ensure there is clear evidence that this data relates to genuinely comparable posts and that duties, responsibilities, knowledge, skills, geographical location, associated terms, conditions, benefits and any other unique factors have been considered provide details of main competitors' comparable posts attach relevant job descriptions/person specifications <p>Legal advice should be sought in all cases where the job group is predominantly male or female to avoid equal pay implications.</p>
15.	<p>Proposed amount of market supplement to be paid:</p> <ul style="list-style-type: none"> The market supplement should normally be based on the median pay of the comparators, however, a supplement should not exceed the level deemed necessary to attract suitable candidates. Please provide evidence to demonstrate how the proposed market supplement has been calculated. Provide details of how the payment will be made, e.g. monthly
16.	<p>How will the market supplement be funded?</p>

17.	<p>Review date</p> <ul style="list-style-type: none"> • Market supplement rates must be reviewed 6 months prior to the end of the fixed term payment period to ensure that employees receive the minimum contractual notice period of one month to confirm any changes/removal. • The outcome of the review will be considered by the CMT before being submitted for approval by ACOS • The review will require completion of the full process and will follow the same approval process.

I agree that the payment of a market supplement is appropriate in this instance; that all the necessary checks have been carried out in accordance with the Council’s policies and procedures; and that all other avenues have been explored appropriately.

Completed by	
Date agreed by Director/AD HR	
Date of CMT	
Agreed YES/NO	
If no – reason	
Details of any amendment and reason(s)	
ACOS date and outcome	
Date manager informed of decision	
Effective date of payments	
Names & payroll numbers of employees to be paid the supplement	
(SSC) Date employees are informed of decision in writing (with contractual conditions)	
Review date	
(Pay & Reward) Team (central record)	

Appendix 2

